SUPREME COURT OF THE UNITED STATES

October Term,

No. 410

EDWARD J. HARDIN, as Mayor of Tazewell, Tennessee,
JAMES B. DeBUSK, as Mayor of New Tazewell, Tennessee, Petitioners,

v.

KENTUCKY UTILITIES COMPANY, Respondent.

No. 570

POWELL VALLEY ELECTRIC COOPERATIVE, Petitioner,

v.

KENTUCKY UTILITIES COMPANY, Respondent.

No. 571

TENNESSEE VALLEY AUTHORITY, Petitioner,

v.

KENTUCKY UTILITIES COMPANY, Respondent.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 962

EDWARD J. HARDIN, as Mayor of Tazewell, Tennessee, and
JAMES B. DEBUSK, as Mayor of New Tazewell, Tennessee, - - - - - *Petitioners,*

v.

KENTUCKY UTILITIES COMPANY, - *Respondent.*

No. 1056

POWELL VALLEY ELECTRIC COOPERATIVE, - *Petitioner,*

v.

KENTUCKY UTILITIES COMPANY, - *Respondent.*

No. 1063

TENNESSEE VALLEY AUTHORITY, - *Petitioner,*

v.

KENTUCKY UTILITIES COMPANY, - *Respondent.*

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITIONS FOR CERTIORARI.

This Brief is filed on behalf of the respondent, Kentucky Utilities Company (hereafter called "KU"), in opposition to the Petitions for a Writ of Certiorari to the United States Court of Appeals for the Sixth Cir-

cuit previously filed herein by Edward J. Hardin and James B. DeBusk as Mayors of Tazewell and New Tazewell, Tennessee, respectively (hereafter referred to as "the Cities"), Powell Valley Electric Cooperative (hereafter called "Powell Valley"), and Tennessee Valley Authority (hereafter called "TVA").[1]

THE STATUTE INVOLVED.

The pertinent provisions of Section 15d(a) of the Tennessee Valley Authority Act, Title 16 USC § 831n-4(a)[2] were set forth in the Petitions for Certiorari previously filed herein and are reprinted in the Appendix to this Brief (*infra,* p. 3aa).

THE QUESTIONS PRESENTED.

The 1959 TVA Act expressly prohibits TVA from making contracts which would have the effect of making TVA or TVA distributors a source of power supply outside the area for which TVA and its distributors were the primary source of power supply on July 1, 1957. In 1963, a TVA distributor, Powell Valley, pursuant to arrangements with TVA, began supplying electric power to customers in the cities of Tazewell and New Tazewell, Tennessee, which customers (1) had been previously served by KU, and (2) were located in a part of a geographically contiguous area comprising a small part of northeastern Tennessee and a large part of Ken-

[1]The Petitions for the Cities, Powell Valley, and TVA are the cases numbered 962, 1056 and 1063, in the October, 1966 Term of this Court.

[2]Hereafter called the 1959 TVA Act.

tucky served exclusively by KU and not served by TVA or its distributors on July 1, 1957 or any time prior or subsequent thereto up to 1963. The questions presented are:

1. **Where the facts as to the location of customers and facilities are not in dispute, is a determination by the TVA Board of Directors that TVA was the "primary source of power supply," within the meaning of the 1959 TVA Act, in that area of Claiborne County, Tennessee, not served by TVA on July 1, 1957, properly subject to judicial review?**
2. **Whether the Court of Appeals correctly construed the provisions of the 1959 TVA Act as it applied to the undisputed facts of this case respecting the service area of KU and of the TVA distributors in Claiborne County, Tennessee.**

STATEMENT OF THE CASE.

KU is a public utility supplying electric service in a large part of the State of Kentucky from the Mississippi River eastward to the eastern border of Kentucky and extending into a part of northeastern Tennessee adjacent to Kentucky. From 1920 to the present day KU and its predecessor corporation have been the sole supplier of electric service in that area of Claiborne County, Tennessee, extending from the Kentucky-Tennessee border at Cumberland Gap, Tennessee, south and east in a corridor approximately 15 miles long, which corridor includes all but a small part of the cities of Tazewell and New Tazewell, Tennessee. Within this

area or corridor KU had on July 1, 1957, and now has, extensive transmission facilities and a distribution network serving an unbroken line of customers down the highway from the Kentucky border at Cumberland Gap to and including the Tazewells and on beyond into the area south of New Tazewell.[3]

In October, 1963, Powell Valley began rendering electric service to certain customers within the Tazewells who had previously been receiving service from KU.[4] KU thereupon instituted this action to enjoin the supplying of TVA power to any customers in the Tazewells not previously being supplied by TVA power.

On August 26, 1964, some three weeks before the trial of the action in the District Court, the TVA Board of Directors adopted a "resolution" purporting to determine that all of Claiborne County, Tennessee, was within the area for which TVA or its distributors were the primary source of power supply on July 1, 1957, within the meaning of the 1959 TVA Act.

The District Court held that KU had standing to maintain the action and that the resolution of the TVA Board was subject to judicial review but concluded "We do not believe that Congress in the 1959 Act intended to exclude the two Tazewells from the primary service area served by TVA and its suppliers as of July 1, 1957." The Court of Appeals reversed, holding that the

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[3]App. 133a-136a (References to the Appendices filed in the Court of Appeals will be denoted "App." followed by the page number).

[4]In some instances the electric service was rendered by Powell Valley under contract with the Cities who had recently established a municipal electric system.

area in question was outside the area for which TVA was the primary source of power supply within the meaning of the 1959 TVA Act and that "the resolution of the TVA Board did not foreclose the testing of its validity by the District Judge or by this Court on appeal."[5]

REASONS FOR DENYING THE WRIT.

1. The Court of Appeals Followed the General Rule Respecting Judicial Review of Administrative Action Asserted to be Contrary to Statutory Limitations on Agency Powers.

The basic contention urged by the petitioners for the granting of certiorari in this case is that the Court of Appeals improperly exercised its function of judicial review in holding that the supplying of the TVA service in question was contrary to the prohibition on geographic expansion of TVA service contained in the 1959 TVA Act. Petitioners contend that the proper construction and interpretation of this statutory limitation on the powers of TVA is a matter to be determined by the Board of Directors of TVA, and not subject to review by the Courts.

The area limitation provisions of the 1959 TVA Act are a plain prohibition against service by TVA or its distributors outside the defined TVA area. The sole purpose of the provision is to prevent geographic expansion of TVA supplied electric service, in com-

[5]The Opinions of the Courts below are set forth in the Appendices to the Petitions for Certiorari.

petition with other utilities, except to the limited extent permitted by the Act. There are no provisions in the Act which either expressly or by implication delegate any authority to the TVA Board of Directors to make binding administrative determinations as to what is or is not in the TVA area as defined in the statute.

Certainly, the TVA Board has broad discretionary power in the conduct of the various operations entrusted to it by Congress. On the other hand, there is no statutory basis for a holding that the TVA Board has the discretion to make a binding determination on the question of whether it is engaging in activity expressly prohibited by Congress, *i.e.*, entering into contracts for the sale of power for use outside the permitted area of TVA service.

It is well settled under the decisions of this Court that the determination of whether an administrative agency has exceeded its statutory authority is a proper judicial function. *Stark* v. *Wickard,* 321 U. S. 288. Particularly is this true in those cases where an express statutory limitation on agency powers is involved. *Peters* v. *Hobby,* 349 U. S. 331; *Leedom* v. *Kyne,* 358 U. S. 184. It is, of course, axiomatic that the Courts are not bound by erroneous conclusions of law of administrative agencies. *National Labor Relations Board* v. *Brown,* 380 U. S. 278. The resolution of the TVA Board was simply a legal conclusion as to the meaning of the statutory prohibition against expansion of TVA service which conclusion was based on an erroneous interpretation of the Act. As such it was clearly sub-

ject to judicial review, and no novel question as to the scope of such review is presented here.

In seeking to place the construction of the TVA Act by its Board of Directors beyond the scope of judicial review, petitioners contend that the resolution of the Board was a "finding of fact" which was supported by "substantial evidence" and therefore not subject to review.

The Court of Appeals properly rejected this contention. In the first place the TVA Board is not a regulatory agency with quasi-legislative or quasi-judicial functions under the Act. Secondly, the facts upon which the determination of the Board were based were not in dispute. The precise location of the facilities and customers of KU and the TVA distributors in Claiborne County, on July 1, 1957, was known to all the parties and never in dispute. Similarly, the statistics as to the number of customers and amount of power and energy supplied by TVA distributors and KU in Claiborne County were not in question and were, in fact, stipulated in the trial of the case. To the extent that any "expertise" was required to determine where the customers and facilities of KU and TVA were located on July 1, 1957, such information has been fully developed in the discovery proceedings in the action and all parties are in agreement as to the location of the services of the respective utilities in Claiborne County.

It did develop during such discovery proceedings that TVA had, in fact, made no attempt to determine the exact location of the perimeter of its service area

in Claiborne County and the Board resolution was obviously prompted by this fact.[6]

The apparent purpose of the Board in adopting its resolution just before the trial was to enable TVA to argue the finality of such determination at the trial. The Board simply took the undisputed facts as to facilities and services of KU and the TVA distributors, as developed in the discovery proceedings in this case, and drew its own legal conclusion based on an erroneous interpretation of the Act and the Congressional intent embodied therein. It was the function of the District Court and the Court of Appeals to test the validity of the Board's interpretation of the law.

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[6]In the deposition of Mr. G. O. Wessenauer, TVA's manager of power, taken on August 12, 1964, two weeks before the adoption of the Board resolution, the following questions and answers were made:

"Q. Now, Mr. Wessenauer, a question has arisen in this case with respect to Claiborne County, and I would like to ask you how you would draw a line across that county depicting where the boundary of TVA service should stop under the terms of the Act?

A. I don't know the answer to that.

Q. Has any officer or representative of TVA given you any advice about that?

A. About what?

Q. About the drawing of the line, where it—what factors would govern the drawing of the line?

A. Well, I think the factors that would govern that would be provided for in the Act.

Q. And where would you draw it then, this Claiborne County, specifically?

A. I don't know; I haven't looked at it.

Q. Who would have the function in TVA of drawing that line?

A. Well, it would—if a line has to be drawn, it would be after an examination of all of the facts and I presume that we would get the advice of our Legal Department as to the meaning of the law with respect to any particular situation, and in light of that advice and the facts that we would have, we would ascertain where the line would be." (App. 261a-262a)

2. The Court of Appeals Properly Considered and Rejected the Interpretation Placed Upon the 1959 TVA Act by the TVA Board.

The petitioners contend that the Act contains no standards for determining the area for which TVA was the primary source of power supply and therefore it is necessarily incumbent upon TVA to make the initial determination as to its area of permitted service. Petitioners then contend that this initial determination by the Board was given no weight by the Court of Appeals.

The Act does contain the necessary standards for making the determination and the Court of Appeals, in fact, gave due consideration to each of the reasons given by the Board for its finding, and found them erroneous as a matter of law.

The "area" in which TVA was the "primary source of power supply" is the geographic area where TVA and its distributors were actually supplying power on July 1, 1957, as distinguished from those areas where other utilities were supplying power on the key date. That the location of customers and facilities is the controlling factor seems hardly open to question and, indeed, it was as much as admitted by TVA in this action.[7]

To this basic limitation there are four specific exceptions in the Act which are precisely defined, none of which are claimed to be applicable to this case.

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[7]TVA's manager of power, G. O. Wessenauer, testifying with respect to a map purporting to show the service area of TVA, stated that the boundary of the service area shown on the map was intended to be an approximation of the extent to which the lines of the TVA distributors went "*geographically.*" (App. 258a)

First, TVA service may be extended to such additional area not more than five miles around the periphery of the existing service area of TVA subject to the proviso, among others, that no part of such additional five miles may be in a municipality receiving electric service from another source on July 1, 1957 (*e.g.*, the Tazewells).

Second, TVA service may be supplied to customers in areas where TVA had generally established service, provided that such areas were not being served by another source on the effective date of the Act, August 6, 1959.

Third, TVA may serve certain specifically named cities and customers (not including the Tazewells) which are expressly excepted in the Act. Finally, TVA was permitted to make certain exchange power arrangements with other utilities.

Thus the area of permitted TVA service is set forth with precision in the Act. The Board simply failed to consider the tests and standards contained in the Act which expressly preclude TVA service to the area in question. The Court of Appeals properly refused to be bound by the Board's determination.

In adopting its resolution the TVA Board ignored the respective geographic service areas of KU and Powell Valley and based its determination on two other factors: (1) certain maps used in testimony before Congressional Committees considering various bills respecting TVA bond legislation; and (2) facts as to service by TVA distributors in the part of Claiborne County outside the area served by KU, which facts

showed that TVA distributors served "most" of the county.[8]

A reading of the opinion of the Court of Appeals shows that the Court duly considered each of these factors and properly rejected them as having no support in the language of the Act. First, the Court properly held that Congress should not be presumed to have intended all of Claiborne County, Tennessee, to be in the TVA area simply because TVA exhibited to Congressional Committees large-scale maps of the southeastern United States, which were admittedly rough approximations, showing all of Claiborne County in its area. Particularly is this true when other maps were submitted to the Congressional committees for the sole purpose of showing that KU was rendering service in Claiborne County.[9]

The other factor relied upon by the TVA Board, statistics as to service in Claiborne County as a whole, was also properly rejected by the Court of Appeals. These statistics showed that TVA distributors supplied approximately 2/3 of the customers and the power in Claiborne County, KU supplying the remaining 1/3. As noted by the Court of Appeals, the 1959 TVA Act as originally introduced in the House of Representatives[10] provided that TVA and its distributors could supply the whole of any county which was being partly supplied with TVA power on July 1, 1957. After extensive hear-

[8]App. 40b-47b.

[9]Such a map was in the possession of TVA but was specifically not brought to the attention of the Board (App. 225a-229a).

[10]H.R. 3460, 86th Cong. 1st Sess. (1959); see Appendix, *infra*, p. 1aa.

ings in which representatives of various utilities operating in the area adjacent to TVA strenuously objected to this "county-wide" approach,[11] the Act was amended to restrict TVA's power sales to the area where it was actually supplying power in 1957. The test as to service in the county as a whole was, therefore, necessary rejected by the Court as being clearly contrary to the legislative intent of the Act.

The Board, based upon the above factors, determined that the periphery of the TVA service area in Claiborne County, Tennessee, was the Kentucky-Tennessee border despite the undisputed fact that KU was the only supplier of power in the Cumberland Gap area *on both sides of the line* which the TVA Directors arbitrarily fixed as TVA's "periphery." The Court of Appeals properly considered and rejected each of the standards applied by TVA as being erroneous as a matter of law, and applied the only valid standard under the act, the geographic location of the customers and facilities of TVA on the given date.

In arguing that Congress intended to leave the determination of the TVA service area to its Board of Directors, considerable emphasis is placed by Petitioners upon the language of the Senate Report accompanying the Senate Committee version of the bill which ultimately became the 1959 TVA Act.[12] The emphasis placed on the Senate Committee Report is misleading in

[11]Hearings before the House Committee on Public Works, March 10-11, 1959, 86th Cong. 1st Sess. (#86-3, H.R. 3460).

[12]The Report is referred to in the Petition of TVA at pages 7 and 9, and in the Petition for the Cities at pages 11, 13, 14, 20, 21, 22, 24, 28.

the extreme. This Report accompanied a version of the bill which contained an area limitation provision which was rejected in its entirety, on the floor of the Senate, in favor of an amendment sponsored by Senators Talmadge and Randolph.[13] Senator Randolph had appended to the Senate Report his minority views opposing the Senate version of the bill.[14] Subsequently his own version of the bill was introduced on the floor of the Senate and was enacted.

The extent to which reliance by the Petitioners on the language of the Senate Committee Report is misleading can be readily seen from a brief review of the evolution of the language of the bill (H.R. 3460) which eventually became the 1959 TVA Act.

Basically, four versions of the area limitation provision of the bill were considered in the course of its passage through the two Houses of Congress: The version originally introduced in the House; the version as reported out of the House Committee and passed by the House (the so-called "Vinson" amendment); the version as reported out of the Senate Committee; and the version as amended on the floor of the Senate (the "Randolph" amendment) and finally passed by both Houses and enacted into law. For convenience the four versions of the bill are printed together as an Appendix to this Brief.

The bill as originally introduced in the House would have prohibited TVA service outside those counties

[13]105 Cong. Rec., p. 13048 (July 9, 1959).

[14]S. Rep. No. 470, 86th Cong., 1st Sess., July 2, 1959, p. 53, 2 U. S. Code Cong. & Ad. News, 86th Cong., 1st Sess., p. 2018 (1959).

which lay wholly or partly within the Tennessee River drainage basin or those counties wholly or partly within the TVA "service area" as of July 1, 1957.

As noted previously (*supra,* page [11]), this "county-wide" approach was rejected by the House Committee on Public Works in favor of an amendment offered by Representative Vinson which would have prohibited the sale or delivery of TVA power "for use outside the service area of the Corporation [TVA] as it existed on July 1, 1957." The Committee adopted the amendment, adding a specific exception for certain named cities. The bill with the Vinson amendment was passed by the House and referred to the Senate Committee on Public Works where a second round of extensive hearings was held.[15]

A majority of the Senate Committee found the House Bill too restrictive on TVA and substituted language which would have permitted substantial expansion of TVA service. The Senate Committee version would have permitted TVA to expand its service area subject only to two general restrictions: first, TVA could not increase by more than the lesser of 2,000 square miles or 2½% the "area for which the Corporation was the primary source of power supply on July 1, 1957;" and, second, TVA could serve no new cities, wherever located, with a population in excess of 5,000 or 10,000 in the case of cities owning their own distribution system.

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[15]Hearings before a Subcommittee of the Senate Committee on Public Works, June 9-10, 1959, 86th Cong., 1st Sess., Revenue Bond Financing by TVA.

As set forth in its Report accompanying the bill,[16] the Senate Committee rejected the House version of the Bill because of what it felt to be problems in establishing a "rigid boundary for limitation of power service."[17] The language of the Senate Committee Report with respect to "elasticity and adjustment" and other quotations from the Senate Report set forth in the Petitions for Certiorari in this case[18] have reference to this Senate Committee version of the bill which would have granted to TVA broad discretion in the expansion of its service area, subject to the overall limitation of 2,000 square miles.

Senator Randolph filed his dissenting views to the Committee Report and subsequently caused to be introduced on the floor of the Senate an amendment which rewrote the entire area limitation provision. This amendment, with certain minor changes, was subsequently enacted into law. The Randolph amendment was a return to the strict House version of the Bill, with the previously discussed exceptions not applicable here, which restricted TVA service to the area it was serving on July 1, 1957.[19]

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[16]S. Rep. #470, 86th Cong., 1st Sess., July 2, 1959, 2 U. S. Code Cong. & Ad. News, 86th Cong., 1st Sess., p. 2000 (1959).

[17]Id., at page 8, 2 U. S. Code Cong. & Ad. News, 86th Cong., 1st Sess., at page 2007 (1959).

[18]Supra, note 12.

[19]The House version of the bill spoke of the "service area" of TVA whereas the Senate version (the Randolph amendment) speaks of the area for which TVA "was the primary source of power supply." That these terms refer to the same geographic area was made plain in the statement of Representative Vinson, the author of the House version, on the floor of the House just prior to final passage of the bill. Representative Vinson, speaking in favor of passage, stated:

"However, in providing an area limitation, the Senate, instead of using the definition of 'service area,' which seemed to

(Continued on following page.)

While it is true, as pointed out in the Petitions for Certiorari herein, that a majority of the Senate Committee favored "elasticity and adjustment" with respect to the expansion of the TVA service area and urged that the TVA Board be given considerable discretion as to the areas where it could expand its service, the views of the Committee did not prevail. The Act as finally passed prohibited the expansion of TVA service beyond the area it was serving in 1957, and the discretion of the TVA Board was replaced by certain precisely defined exceptions none of which are even argued to be applicable to this case.[20] The arguments of the petitioners based on the Senate Committee Report are in fact the very arguments rejected by Congress when it enacted the 1959 TVA Act.

(Continued from preceding page.)

be confusing to some, referred instead 'to the area for which TVA and its distributors were the primary source of power supply on July 1, 1957.'

"The words 'primary source of power supply on July 1, 1957' have the same meaning as the language 'service area of the Corporation as it existed on July 1, 1957.' " 105 Cong. Rec., p. 14121 (July 23, 1959).

[20]In particular it should be noted that the statements contained in pages 21 and 24 of the Cities' Petition for Certiorari concerning the views of the Senate Committee are inaccurate and misleading. Senator Randolph is described as an "opponent" of the final language of the bill when in fact he was the *author* of such language. Again, at page 24 of this Petition there is a reference to the "final language" of the act being left to some degree imprecise because the Senate Committee believed it "desirable to authorize minor adjustments." As noted above, the imprecise language of the Senate Committee version of the bill was rejected in favor of the five-mile limitation and other precise exceptions not applicable here. Finally, it should be pointed out that the statement of Senator Cooper quoted at page 15 of the Petition of the Cities was a statement made in support of his unsuccessful motion to strike the Randolph amendment. As correctly pointed out by Senator Cooper, the effect of the Randolph amendment which was subsequently enacted was to deny TVA power to small communities near the periphery of TVA, such as Tazewell and New Tazewell, Tennessee. 105 Cong. Rec. 13052 (July 9, 1959).

CONCLUSION.

While the particular statutory provisions involved in this case have not been previously considered by this Court, the question presented with respect to the scope of judicial review of administrative actions is not a novel one. The Court of Appeals has held that a determination by the TVA Board as to the proper construction of a statutory limitation on its own powers is subject to judicial review. This holding is in harmony with well-settled principles of law as established by the applicable decisions of this Court.

It has been suggested by the petitioners that there there is considerable confusion and a prospect of mounting litigation under the 1959 TVA Act which would justify consideration of this case by this Court. This suggestion is not borne out by the facts. In the eight years since the enactment of the 1959 TVA Act this is the only case to have reached the United States Court of Appeals.[21] Should a conflict between or confusion among the decided cases under this Act arise in the future, review by this Court on writ of certiorari would

[21]There are three other cases in District Courts which involve the 1959 TVA Act: *Georgia Power Co.* v. *Tennessee Valley Authority*, Civil No. 1788, N. D. Ga.; *Kentucky Utilities Company* v. *Udall*, Civil No. 4835, W. D. Ky.; and *Jackson Purchase Rural Elec. Coop. Corp.* v. *Tennessee Valley Authority*, Civil No. 1275, W. D. Ky. The latter action was instituted in July of 1962 but to date no attempt has been made to set it for trial. A fourth case noted in the Petition of TVA, *Kentucky Utilities Co.* v. *Tennessee Valley Authority*, Civil No. 1158, W. D. Ky., was dismissed on April 12, 1962. Each of the above noted pending actions involves questions under the 1959 Act which are different from the questions presented in this case and a decision by this Court on the merits of the instant case would not be dispositive of the issues in the other pending cases.

be appropriate, but no such conflict or confusion exists today.

For the reasons set forth in this Brief, the Petitions for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

SQUIRE R. OGDEN,
MALCOLM Y. MARSHALL,
JAMES S. WELCH,
OGDEN, ROBERTSON & MARSHALL,
Marion E. Taylor Building,
Louisville, Kentucky 40202

Counsel for Respondent.

Dated: March, 1967.

APPENDIX

APPENDIX

APPENDIX

H. R. 3460 as introduced in the House of Representatives on January 27, 1959:

> "It is hereby declared to be the intent of this Act that the power facilities built or acquired with the proceeds of such bonds or power revenues shall not be used, without prior approval by Act of Congress, for the sale or delivery of power by the Corporation outside the counties which lie in whole or in part within the Tennessee River drainage basin or the service area in which power generated by the Corporation is being used on July 1, 1957, except, when economically feasible, to serve the United States or agencies thereof or to interconnect with other utility systems for exchange power arrangements, or to interconnect Tennessee Valley Authority generating plants, or to serve existing rural electric cooperatives (as same now exist as to area and as of July 1, 1957) now being served in part by the Tennessee Valley Authority: Provided, further, That except as expressly provided above, all contracts entered into after this provision becomes law for the supply of power to any distributor shall contain an agreement by said distributor to confine the resale of such power within the boundaries of the counties above described and such additional areas (not more than five miles from such boundaries) as may be necessary to care for the growth of communities within said counties provided said communities were receiving Tennessee Valley Authority power on July 1, 1957."

H. R. 3460 as reported out of the House Committee on Public Works with the Vinson amendment, April 14, 1959:

"Unless otherwise specifically authorized by Act of Congress existing and subsequently built, leased or acquired power facilities of the Corporation shall not be used for the sale or delivery of power for use outside the service area of the Corporation as it existed on July 1, 1957, except when economically feasible for exchange power arrangements with other utility systems with which the Corporation had such arrangements on said date. Nothing herein contained shall prevent the Corporation from continuing service to Dyersburg, Tennessee, and Covington, Tennessee, or from entering into contracts to supply or from supplying power to the cities of Paducah, Kentucky; Princeton, Kentucky; Glasgow, Kentucky; Chicamauga, Georgia; Ringgold, Georgia; and South Fulton, Tennessee; or agencies thereof: Provided further, That nothing herein contained shall prevent the transmission of TVA power to the Department of Defense or any agency thereof, on certification by the President of the United States that an emergency defense need for such power exists."

H. R. 3460 as reported out of the Senate Committee on Public Works on July 2, 1959:

"Unless otherwise specifically authorized by Act of Congress the Corporation shall make no contracts for the sale of power (except with such States, counties, municipalities, corporations, partnerships, or individuals with which the Corporation had such contracts on July 1, 1957) which would make the Corporation a source of power supply for any city which owned its power distribution system on July 1, 1957, having a population in excess of ten thousand, or to any other city having a population in excess of five thousand, according to the latest Federal census, or which would in

any event, increase by more than 2½ per centum (or two thousand square miles, whichever is the lesser, no part of which may be in a State not now served by the Corporation, nor more than five hundred square miles of which may be in any one State now served by the Corporation or its customers), the area for which the Corporation was the primary source of power supply on July 1, 1957; Provided, however, That in addition to the extension of the service area authorized in this subsection, nothing herein contained shall prevent the Corporation from continuing to supply power to Dyersburg, Tennessee, and Covington, Tennessee, or from entering into contracts to supply or from supplying power to the cities of Paducah, Kentucky; Princeton, Kentucky; Glasgow, Kentucky; Fulton, Kentucky; Monticello, Kentucky; Chicamauga, Georgia; Ringgold, Georgia; Oak Ridge, Tennessee; and South Fulton, Tennessee; or agencies thereof; or from entering into contracts to supply or from supplying power for the Naval Auxiliary Air Station in Lauderdale and Kemper Counties, Mississippi, through the facilities of the East Mississippi Electric Power Association, and for the rural customers in the areas now served by the said East Mississippi Electric Power Association: Provided further, That nothing herein contained shall prevent the transmission of TVA power to the Atomic Energy Commission or the Department of Defense or any agency thereof, on certification by the President of the United States that an emergency defense need for such power exists."

H. R. 3460 as finally enacted with the Randolph amendment:

"Unless otherwise specifically authorized by Act of Congress the Corporation shall make no contracts for